

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**LASTARZA R. THOMAS,**

**Petitioner,**

**v.**

**Warden DOUG WILLIAMS,**

**Respondent.**

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**CIVIL ACTION NO. 5:14-CV-307 (MTT)**

**ORDER**

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle. (Doc. 13). The Magistrate Judge recommends granting the Respondent's motion to dismiss the Petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 as untimely. (Docs. 1; 8). The Magistrate Judge further recommends that a certificate of appealability be denied. The Petitioner has objected to the Recommendation. (Doc. 14). The Court has reviewed the objection and has made a de novo determination of the portions of the Recommendation to which the Petitioner objects. The Petitioner contends, as he did in response to the motion to dismiss, that his petition was timely filed pursuant to 28 U.S.C. § 2244(d)(1)(C) because it is based on a new rule of constitutional law announced in *Hinton v. Alabama*, 134 S. Ct. 1081 (2014). However, the Court agrees the petition is not timely for the reasons stated in the Recommendation.<sup>1</sup>

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<sup>1</sup> The Recommendation lists the date the Petitioner's § 2254 petition was due as September 14, 2010. Because the Petitioner filed his state habeas petition on October 2, 2009, when 227 days of the one-year limitations period had elapsed, the time to file his federal habeas petition expired 138 days after the limitations period began to run again on April 5, 2010 (30 days after the state habeas court denied the state petition). The operative date, August 21, 2010, fell on a Saturday, so the Petitioner had until the

The Court has reviewed the Recommendation and the Petitioner's objection, and the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and made the order of this Court. Accordingly, the Defendant's motion to dismiss (Doc. 8) is **GRANTED**, and the petition (Doc. 1) is **DISMISSED as untimely**.

#### **CERTIFICATE OF APPEALABILITY**

A prisoner seeking to appeal a district court's final order denying his petition for writ of habeas corpus has no absolute entitlement to appeal but must obtain a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(A). As amended effective December 1, 2009, Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[t]he district court must issue or deny a [COA] when it enters a final order adverse to the applicant," and if a COA is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)."

Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." This requires a demonstration that "jurists of reason could disagree with the district court's resolution of [a petitioner's] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the Court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, as in this case, the petitioner must show that "jurists of reason would find it debatable whether the district court was correct

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following Monday, August 23, 2010, to file his petition. However, the actual date is immaterial because both sides agree the petition was not timely pursuant to 28 U.S.C. 2244(d)(1)(A).

in its procedural ruling”; and (2) “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Petitioner has not made these showings. Therefore, Petitioner is **DENIED a COA**. Additionally, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3). Accordingly, any motion to proceed *in forma pauperis* on appeal is **DENIED**.

**SO ORDERED**, this 15th day of April, 2015.

S/ Marc T. Treadwell  
MARC T. TREADWELL  
UNITED STATES DISTRICT COURT